

STATE OF SOUTH CAROLINA)	BEFORE THE SOUTH CAROLINA
)	
COUNTY OF RICHLAND)	STATE BOARD OF EDUCATION
)	
In Re:)	FINAL ORDER
)	01-CS-01
Vision Academy Charter School)	
_____)	

This matter is before the South Carolina State Board of Education (State Board) as an appeal from the decision of the Richland County School District One Board of Trustees (Local Board) denying the Vision Academy Charter School's (Charter School) application. A public hearing was held on July 11, 2001 at 11:00 AM in Columbia, South Carolina. Charles Boykin, Esquire and Mary Broadwater, Esquire, and Susan Williams, Esquire appeared on behalf of the Local Board and Cathy Hocfer Dunn, Esquire and Richard Weldon, Esquire appeared on behalf of the Charter School.

I. FACTS

On November 1, 2000, the Charter School filed an application with the Local Board. The Local Board voted to deny the charter on January 23, 2000. The Charter School amended and resubmitted its application on February 26, 2001. On March 13, 2001, the Local Board voted to deny the charter again. The Local Board issued its written order on March 21, 2001. The Charter School filed its appeal to the State Board on March 30, 2001, and later amended its appeal on April 4, 2001.

The Charter School application set out a plan to have a kindergarten through grade six school initially, ultimately extending to a kindergarten through grade eight school. The initial plan was to have two hundred eighty students the first year of operation. The school was to

be located at 3600 Colonial Drive, Columbia, South Carolina and the school would move to a different site or expand in future years, as the school grew.

The Charter School planned to have instructional hours from 8:00 AM to 4:00 PM but would be open from 7:30 AM to 7:30 PM. The curriculum was based on "Core Knowledge Curriculum."

During the application process, the District's staff made several requests for information from the Charter School. The Charter School provided information to the District at various times during the application process.

According to the District, the application contained deficiencies. The significant deficiencies identified by the District are as follows:

1. It did not contain sufficient information about student, parent, and teacher support.
2. It did not contain an adequate transportation plan.
3. It did not contain evidence of economic viability.
3. It did not contain an adequate explanation of the facilities and the health and safety issues.
4. It did not contain a comparison of its curriculum to the State and district standards.

The District staff recommended the denial of the application to the Local Board at the January 23, 2001, meeting. There is little evidence in the record that the Charter School received much of an opportunity to be heard at that meeting, although the Local Board's agenda stated that a public hearing would be held. While there are speaker sign-in sheets as a part of the record, the minutes of that meeting only reflect the recommendations from the

district staff and the vote to deny the charter by the Local Board. The Local Board issued an order denying the charter on February 9, 2001.

The Charter School resubmitted its application and responded to the issues raised in the Local Board's first order. It asked for conditional approval of the charter school instead of full approval as it has had originally requested.

The record reflects that the Local Board considered the amended application at a meeting on March 13, 2001. The minutes of this meeting set forth in detail the recommendations from the District. The minutes do not reflect any statements made by the Charter School, nor do they show any indication that the Charter School was given an opportunity to respond to the District's statements.

The Local Board voted to deny the charter. This appeal followed.

II. ISSUES

There are two main issues before the State Board in this appeal. The Charter school first alleges that it was not afforded due process in the consideration of its application. The second issue addresses the application, as to whether the Local Board erred in denying a charter based on the application.

III. STANDARD OF REVIEW

The State Board serves as an appellate body in reviewing the decision of the Local Board. Our review is limited to a review of the record and to apply the standard of review set forth in State Board of Education Regulation 43-600, 24 S.C. Code of Regs. 43-600 (Supp. 2000). The State Board must consider if the Local Board's ruling was clearly erroneous in light of the substantial evidence *presented* to the Local Board. R43-600 and Beaufort County Local Board of Education v. Lighthouse, 516 S.E.2d 655 (1999) (emphasis added).

State Board Regulation 43-600 provides: "The State Board of Education may affirm or reverse the decision of the local school board of trustees or remand the case with written instructions for reconsideration if it determines that the local school board of trustees decision:

1. violated constitutional or statutory provisions;
2. exceeded the authority of the local school board of trustees;
3. was based upon an error of law;
4. is clearly erroneous in view of the substantial evidence on the record; or
5. was arbitrary or capricious."

24 S.C. Code of Regs. 43-600 (Supp. 2000).

IV. ANALYSIS

A. DUE PROCESS

The Charter School argues that the Local Board failed to afford it procedural due process as required by law. It argues that the charter school law is to be liberally interpreted to support the goals of the law. It also asserts that the law provides that the local district must provide technical assistance to the charter school to assist in the preparation or revision of applications. (CS Memorandum, p. 7).

The Charter School cites the following as evidence that the Local Board failed to provide procedural due process to the Charter School:

The Charter School representatives were

1. precluded from making a record as evidenced by the minutes of the March 13, 2001 meeting,
2. allowed to speak for only three (3) minutes,
3. not allowed to yield time to other speakers,
4. not allowed to rebut, respond to or challenge incorrect or erroneous statements made by the Board Members or District staff or employees or other speakers,
5. not informed or advised pursuant to the Freedom of Information Act of the District committee and subcommittee meetings in which the amended application was discussed,

6. not informed of actions of District committee or subcommittee work because there were no minutes taken which the Charter School alleges is in violation of the Freedom of Information act,
7. not informed by the District of any information that it needed to present, and
8. not informed of procedures of the Local Board's committee or subcommittee meetings.

The State Board finds that the charter school law does not address the level of due process required during the charter school application process. The law does, however, set forth the District's responsibilities during the application process. S.C. Code Ann. § 59-40-70 (Sapp. 2000) states:

(A) The local school board may establish a schedule for receiving applications from charter schools and shall make a copy of any schedule available to all interested parties upon request. If the local school board finds the charter school application is incomplete or fails to meet the spirit and intent of this chapter, it immediately shall request the necessary information from the charter applicant.

(B) After giving reasonable public notice, the local school board shall hold community meetings in the affected areas or the entire school district to obtain information to assist it in their decision to grant a charter school application. The local school board shall rule on the application for a charter school in a public hearing, upon reasonable public notice, within ninety days after receiving the application. If there is no ruling within ninety days, the application is considered approved.

(C) A local school board of trustees shall only deny an application if the application does not meet the requirements specified in Section 59-40-50 or 59-40-60, fails to meet the spirit and intent of this chapter, or adversely affects other students in the district. It shall provide, within ten days, a written explanation of the reasons for denial, citing specific provisions of Section 59-40-50 or 59-40-60 that the application violates. This written explanation immediately shall be sent to the charter committee and filed with the State Board of Education.

(D) If the local school board of trustees denies a charter school application, the charter applicant may amend its application to conform with the reasons for denial and reapply to the local board, which has thirty days to approve or deny the application, or may appeal the denial to the State Board of Education pursuant to Section 59-40-90.

(E) If the local school board approves the application, it becomes the charter school's sponsor and shall sign the approved application which shall constitute a contract with the charter committee of the charter school. A copy of the charter shall be filed with the State Board of Education.

The Charter School alleges due process violations during the public hearing stage of the application process. S.C. Code Ann. § 59-40-70 (B) (Supp. 2000) addresses the public hearing but does not set forth the type of hearing required, other than to say that the board shall rule in a "public hearing." The level of participation is not defined. The Charter School, in its oral argument, asserted that the Administrative Procedures Act (APA) applies to this case. This assertion is misplaced as the APA does not apply to local school boards. The APA defines "agency" as "each state board, commission, department or officer, other than the legislature or the courts, but to include the administrative law judge division, authorized by law to determine contested cases." S.C. Code Ann. § 1-23-310 (Supp. 2000). The definition does not include local school boards. Therefore, the procedural requirements of the APA do not apply to the S.C. Code Ann. 59-40-70 (B) requirement that local boards vote at a public hearing. Without legislative guidance regarding the requirements of the public hearing, the State Board finds that the law requires the Local Board to conduct a public hearing according to its own policies. There is no evidence in the record that the Local Board did not follow its own public hearing policies.

S.C. Code Ann. 59-40-70 (A) provides "the local school board may establish a schedule for receiving applications from charter schools and shall make a copy of any schedule available to all interested parties upon request. If the local school board finds the charter school application is incomplete or fails to meet the spirit and intent of this chapter, it immediately shall request the necessary information from the charter applicant."

On a number of occasions, the District staff requested information from the Charter School. In a letter dated December 15, 2000, the District requested additional information from the Charter School and asked that the information be submitted by January 4, 2001. In

that letter Susan Williams, Esquire also notified the Charter School that the Local Board would have a meeting on January 9, 2001, to receive public input on the application. Ms. Williams also stated in her letter that she was providing the Charter School with "Board Policy IHBH and its administrative rule." (CS Record, p. 134-138). The Charter School, in its oral argument, asserted that it was not offered enough time to address the questions due to the Christmas holidays. The Local Board's policy stipulated that applications must be filed on November 1. (LB Record, tab 19). Pursuant to S.C. Code Ann. § 59-40-70 a local school board must rule on an application within ninety days of the receipt of the application. The State Board finds that the request by the Local Board, approximately halfway through the application process, is not unreasonable. The Charter School was given twenty days to return the answers. Even considering the fact that Christmas and New Years Day, fall within those twenty days, we find that the time frame was adequate and there was no due process violation on the part of the Local Board in making the request.

Therefore, the State Board finds that the Charter School received due process in the application and hearing process as mandated by the Charter School Act.

B. DENIAL OF CHARTER BASED ON THE EVIDENCE BEFORE THE LOCAL BOARD

The Local Board raised a number of issues regarding the sufficiency of the application and whether the Charter School's application met the requirements of the law. Since affirming the Local Board on any one issue would result in the denial of the charter application, the State Board will only address the following issues: 1) whether the Local Board erred in finding that there was not adequate support (students, parents, or teachers) to support the charter school; 2) whether the Local Board erred in finding that the Charter

School's curriculum did not meet the standards of the Local Board; and 3) whether the Local Board erred in finding that the Charter School was not financially sound.

I. Community Support

The Local Board held that there was not adequate evidence to show that the Charter School met the requirements of S.C. Code Ann. § 59-40-60(F)(3) (The application shall include "evidence that an adequate number of parents, teachers, pupils, or any combination thereof support the formation of a charter school.") (CS Record p. 260, Local Board Order, Conclusions of Law #5).

The Charter School argues that since it asked for conditional approval, the Local Board erred in holding that the amended application did not contain sufficient information to determine whether the Charter School met the requirements of § 59-40-60(F)(3). (CS Record p. i, Notice of Appeal, paragraph #4).

The Charter School further argues that the Local Board erred in holding that there was not adequate evidence of support that the Charter School met § 59-40-60(F)(3) because it argues the law requires any combination of support, not specifically that the applicant provide support of parents, teachers, *and* pupils. (CS Record p. iii, Notice of Appeal, paragraph #8).

Under State Board Regulation 43-600 the State Board must determine if the Local Board's decision was clearly erroneous in view of the substantial evidence on the record. 24 S.C. Code of Regs. 43-600 (Supp. 2000). The record supports the Local Board's finding that there was insufficient evidence to show that the charter school was adequately supported by students, parents, and teachers as required under S.C. Code Ann. § 59-40-60(F)(3). The record includes lists of students who attend an after school program at the school site. There

are no statements from these parents or any others that they plan to enroll their children in the school. There are no statements from teachers supporting the school.

The Charter School raised the issue of conditional approval throughout its memorandum and in its oral argument. It tries to distinguish the Lighthouse case stating that in Lighthouse the South Carolina Supreme Court did not consider the issue of conditional approval but of full approval and that because the Charter School has requested conditional approval of the charter, it does not have to offer the proof necessary in Lighthouse.

The law states that a "Local Board may conditionally authorize a charter school before the applicant has secured its space, equipment, facilities, and personnel if the applicant indicates such authority is necessary for it to meet the requirements of this chapter." S.C. Code Ann. § 59-40-80 (Supp. 2000). Conditional approval is not mandated. The language "local school board *may*" is permissive not mandatory. (See, Edge v. State Farm Insurance, 546 S.E.2d 647, 649 (2001) "We held the statute did not require insureds to pursue an administrative remedy since the legislature had used the word "may" in the statute, which is a permissive and not a mandatory term."). Even so, the conditional approval is limited to those instances where the approval is needed to *secure* space, equipment, etc. It does not diminish the requirement to provide evidence under the act.

The State Board finds that the Local Board did not err in finding that there was not sufficient evidence to show that the Charter School met the requirements of S.C. Code Ann. § 59-40-60(F)(3).

2. Curriculum

The Local Board determined that the Charter School did not describe an academic program that would meet the current educational standards of the District. (LD Memorandum p. 16).

The Charter School argues the Local Board's determination that the proposed curriculum is not equal to or better than the District's curriculum is not supported by evidence. (CS Record p. x, Amended Notice of Appeal, paragraph #17). The Charter School also argues that the request regarding the curriculum exceeds that which is required by the Charter School Application and the law. (CS Record p. x, Amended Notice of Appeal, paragraph #18).

The law requires a charter school curriculum to meet or exceed any content standards adopted by the school district. S.C. Code Ann. § 59-40-60(F)(4) (Supp. 2000). There is no evidence in the record to show that the academic program, Core Knowledge, met or exceeded the District's curriculum. Therefore, we affirm the Local Board on this ground.

3. Financially Sound

The Local Board ruled that the Charter School would not be economically viable based on the new enrollment figures presented in the amended application. The budget, which accompanied the resubmitted application, was not adjusted for the lower numbers of students to be enrolled. Thus, the Local Board determined that there would be a budget shortfall. The budget also made no provision for the funds needed for facility renovations. (CS Record p. 260, Conclusions of Law # 6).

The Charter School argues that the Local Board erred in holding that the school would not be economically viable. In addition, the Charter School claims the Local Board waived

this issue because it was not raised in the initial order of denial. (CS Record p. viii, Notice of Appeal, paragraph #9).

We concur with the Local Board's ruling. The Charter School failed to revise its budget when it submitted the revised application, even though the Charter School reduced the enrollment by one hundred students. Without a new budget, the Local Board attempted to estimate the funds needed and when it did so, there appeared to be a significant deficit. There was no other evidence in the record to dispute these figures.


The Charter School's argument that since the Local Board did not raise the issue of economic viability in its first denial of the charter school application, it is precluded from raising it now is misplaced. First, there is nothing in the charter school law that states that a Local Board is bound by the initial reasons of denial. Further, the Local Board based its ruling regarding economic viability on the fact that the Charter School did not adjust its budget to reflect the decrease in the projected numbers of students from the time the Charter School filed the original application to the time the amended application was submitted. Since the charter school law does not prohibit a new issue being brought during the re-application process, the Local Board did not err in raising the issue of economic viability in its denial of the amended application. Additionally, the facts surrounding the budget changed from the original submittal to the submittal of the amended application; therefore, the Local Board couldn't have waived this issue since the ruling was based on new enrollment numbers first presented in the amended application. The State Board affirms the Local Board on this ground.

CONCLUSION

The decision of the Local Board is upheld.

South Carolina State Board of Education

By:



Greg Killian, Chair

Columbia, South Carolina

July 31, 2003